

SAMPLE - MASSACHUSETTS LIFE SCIENCES CENTER TAX INCENTIVE AGREEMENT

This Life Sciences Tax Incentive Agreement (the "Agreement") dated as of _____, 2011 (the "Effective Date"), is entered into between the Massachusetts Life Sciences Center ("MLSC"), an independent public instrumentality of The Commonwealth of Massachusetts (the "Commonwealth"), and _____ ("Recipient"), a _____ corporation, having its principal office and place of business at _____.

WHEREAS, MLSC was established pursuant to Chapter 23I of the Massachusetts General Laws (the "Life Sciences Act") to promote the development of life sciences in the Commonwealth;

WHEREAS, on July 11th, 2011, MLSC commenced the second round of the Life Sciences Tax Incentive Program (the "Program") to expand life sciences-related employment opportunities, promote health-related innovations and stimulate research and development, manufacturing and commercialization in the life sciences in the Commonwealth;

WHEREAS, Recipient has applied for certain credits, exemptions or other tax benefits under the Program in accordance with Section 5(d) of the Life Sciences Act (the "Tax Incentives");

WHEREAS, Recipient has supplemented its application submitted by **Month Day**, 2011 with additional information as requested by the MLSC (together, the "Application");

WHEREAS, the Board of Directors of the MLSC certified the Recipient as a certified life sciences company and awarded Recipient the Tax Incentives set forth in Section 1 of this Agreement on February XX, 2012, contingent upon execution of this Agreement;

NOW, THEREFORE, in reliance on the mutual representations, warranties and agreements herein contained, the parties agree as follows:

1. In accordance with Section 5(d) of the Life Sciences Act, MLSC hereby awards Recipient Tax Incentives, up to such amount and on such terms as set forth below:

	<u>Gross Amount of Tax Incentive up to (\$) of Tax Benefit</u>	<u>Refund Limit (where applicable)</u>	<u>Last Tax Year in which Tax Incentives May Be Claimed</u>
Life Sciences Investment Tax Credit Pursuant to 62 M.G.L. 6(m) and 63 M.G.L. 38U	_____	90% of excess credit	_____
FDA User Fees Credit Pursuant to 62 M.G.L. 6(n) and 63 M.G.L. 31M	_____	90% of excess credit	_____
Extension of Net Operating Losses Pursuant to 63 M.G.L. 30 ¶17	_____	N.A.	_____
Elimination of Throwback Provision Pursuant to 63 M.G.L. 38(f) ¶6	_____	N.A.	_____
90% Refund of Already-available Excess \$38M Research Credits Pursuant to 63 M.G.L. 38M(j)	_____	N.A.	_____
\$38W Life Sciences Research Credit Pursuant to 63 M.G.L. 38W	_____	N.A.	_____
Deduction for Qualified Orphan Drug Expenses Pursuant to 63 M.G.L. 38V	_____	N.A.	_____
Designation as R&D Company for Sales Tax Purposes Pursuant to 63 M.G.L. 42B ¶3	_____	N.A.	_____

Sales Tax Exemption for Certain Property Pursuant to 64H M.G.L. 6(xx)	_____	N.A.	_____
Life Sciences Jobs Incentive Refundable Credit Pursuant to c.68 of Acts of 2011	_____	90% of excess credit	_____
TOTAL	_____		

2. Subject to the provisions of this Agreement, the Life Sciences Act, and other applicable laws, Recipient may claim all or a portion of the tax value of the Tax Incentives indicated in the column entitled "Gross Amount of Tax Incentive Up To (\$) of Tax Benefit" in Section 1 of this Agreement (the "Awarded Amount"). Absent future action by the Board of Directors of the MLSC, in no event shall Recipient be entitled to claim any amounts in excess of the Awarded Amount for any Tax Incentive awarded under the Program. In cases where a Life Sciences Investment Tax Credit or an FDA User Fees Credit is awarded, the Recipient may elect a refund of 90% of any excess of the credit over such portion of the credit that is applied against the corporate excise tax otherwise due.

3. In order to claim the Tax Incentive (s) set forth in Section 1 of this Agreement, Recipient must claim such Tax Incentives in accordance with Massachusetts law with the Massachusetts Department of Revenue ("DOR") not later than the last year indicated in the column entitled "Last Tax Year in Which Incentive(s) May Be Claimed" in Section 1 of this Agreement. Recipient may not claim award prior to July 1, 2012. Recipient may also not deduct any award amount from any quarterly payments or tax extension payments due the Commonwealth of Massachusetts. Failure to claim such Tax Incentives in the last tax year specified in Section 1 of this Agreement shall result in a forfeiture by Recipient of such Tax Incentives. Recipient and the MLSC acknowledge and agree that the DOR has the sole authority to make adjustments to Recipient's tax liability upon audit and to administer and enforce all applicable provisions of the Commonwealth's tax laws and regulations.

4. Nothing in this Agreement shall prohibit Recipient from applying to the MLSC for additional Tax Incentives in the future.

5. In accordance with Section 5(b) of the Life Sciences Act, the Board of Directors of the MLSC has certified Recipient as a certified life sciences company as of January 1, 2012. As a certified life sciences company and in accordance with the Life Sciences Act, Recipient acknowledges and agrees to meet the following minimum annual job creation and salary targets for the five-year certification period ending December 31, 2015, unless Recipient's certification as a certified life sciences company has been earlier revoked pursuant to Section 5 of the Life Sciences Act:

- a. "Baseline headcount": Number of total permanent full-time employees in Recipient's Massachusetts facilities as defined in Section 2 of the Life Sciences Act and as further specified by the MLSC to be 35 hours or more per week ("Permanent FTE")
As of December 31, 2011 (the "Measurement Date"): _____ (a)
- b. Number of new total Permanent FTEs for 2012 (per application): _____ (b)
- c. For annual compliance reporting purposes, minimum projected headcount total Permanent FTEs in Recipient's Massachusetts facilities for each anniversary of the Measurement Date: (a) above + (b) above = _____
- d. Projected average salaries of Permanent FTEs in Recipient's Massachusetts facilities as of the first anniversary of the Measurement Date as set forth in the Recipient's Application: _____ \$

6. Recipient shall file an annual report with the MLSC within thirty (30) days of the end of each calendar year, in such form as provided by the MLSC, certifying whether it has met, or exceeded, the specific minimum targets set forth in Section 5 of this Agreement. Recipient shall file a quarterly report with the MLSC within thirty (30) days of the end of each calendar quarter (March 31, June 30, September 30) indicating the number of Permanent FTEs employed in Massachusetts by Recipient. Recipient further acknowledges and agrees that failure to meet the annual targets may result in revocation of Recipient's status as a certified life sciences company by the MLSC and the disallowance by DOR of any Tax Incentives awarded to Recipient pursuant to this Agreement, in accordance with Section 5 of the Life Sciences Act.

7. Recipient hereby authorizes and consents to DOR providing the MLSC with information, including but not limited to tax return and wage reporting information, that is (a) necessary to verify the amount and tax

year in which Recipient claims any of the Tax Incentives awarded in Section 1 of this Agreement or Recipient's fulfillment of job creation and salary targets under Section 5 of this Agreement, or (b) otherwise necessary to ensure the proper operation or enforcement of this Agreement or the Program.

8. All communications to MLSC shall be mailed or delivered to the following address, or sent by facsimile to:

Brad Rosenblum, Chief Financial Officer
Re: Life Sciences Tax Incentive Program
Massachusetts Life Sciences Center
1000 Winter Street, Suite 2900
Waltham, MA 02451
(781) 373-7777 (phone)
(781) 622-1530 (fax)

9. Recipient acknowledges that under this Agreement (a) MLSC has not made any commitment, oral, written or otherwise to provide funding or other support to Recipient other than the incentives set forth in Section 1 above; (b) in no way is Recipient relying on this Agreement or any other statement, oral or written, to provide any expectation of additional funding, support or award by MLSC; and (c) any future agreement between MLSC and Recipient shall be in writing and executed by duly authorized representatives of MLSC and Recipient.

10. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement, and the balance of the Agreement shall be interpreted as if such provision were so excluded, and shall be enforceable in accordance with its terms.

12. This Agreement shall be construed under, and governed by, the laws of the Commonwealth, without regard to choice of law provisions. Recipient agrees to bring any Federal or State legal proceedings arising under this Agreement in which the Commonwealth or MLSC is a party in a court of competent jurisdiction within the Commonwealth, except that any claim of abatement of tax, subject to administrative remedies pursued within the DOR, shall be pursued in the Appellate Tax Board in accordance with applicable law.

13. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including, without limitation, by sale or transfer of all or substantially all assets, merger or consolidation). Recipient may assign this Agreement to an affiliate or in connection with the merger, consolidation or sale of all or substantially all of its assets, provided that the affiliate or acquirer agrees to assume all responsibilities and obligations under this Agreement; provided, however, that Recipient shall not otherwise assign or in any way otherwise transfer any interest in this Agreement, without the prior written consent of MLSC, such consent not to be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MASSACHUSETTS LIFE SCIENCES CENTER

By: _____
Susan Windham-Bannister
CEO and President

[NAME OF RECIPIENT]

By: _____

Name: _____

Title: _____

Tax Identification No.: _____